

June 2, 2004

Jim Mann
Montana-Dakota Utilities Co.
P. O. Box 1060
Rapid City, SD 57701

Wes Johnson dba
Create-A-Scape Landscaping
1323B Sidney Drive
Rapid City, SD 57701

Re: Correction on cover letter Complaint OC04-003(B) – Complaint Resolution form was correction

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on June 2, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-003 (A) and Complaint OC04-003 (B) filed by Montana-Dakota Utilities Company against Wesley Johnson, dba Create-A-Scape Landscaping.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violations included in this complaint were determined to be as follows:

Complaint OC04-003 (A)

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

The Enforcement Committee found that there was probable cause that Wesley Johnson, dba Create-A-Scape Landscaping, had violated SDCL 49-7A-5 by commencing without providing advance notification to the South Dakota One Call System.

The committee recommends a penalty of five-hundred dollars (\$500.00) with three-hundred dollars (\$300.00) suspended on the basis that Wesley Johnson, dba Create-A-Scape Landscaping, fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003 (A).

Complaint OC04-003 (B)

Alleged Violation of SDCL 49-7A-8 Location of underground facilities - Marking

The Enforcement Committee found that there was probable cause that Wesley Johnson, dba Create-A-Scape Landscaping, had violated SDCL 49-7A-8 by failing to maintain a minimum horizontal clearance of 18 inches between the a marked underground facility and the cutting edge of any mechanical equipment.

The committee recommends a penalty of one-thousand dollars (\$1000.00) **with four-hundred dollars (\$400.00)** suspended on the basis that Wesley Johnson, dba Create-A-Scape Landscaping, fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003 (B).

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on either or both of the violations alleged in this complaint. Your decision should be reflected on the third page of the attachment. **Please return the signed form prior to the close of business on June 18, 2004 to:**

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation (s) alleged in the rejected complaint(s). Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19..

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. **You are strongly urged to reply to this Notice in the time frame described above and to obtain the advise of counsel should you have any legal questions.**

Sincerely,

Larry L. Englerth
Executive Director

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COMPLAINT OC04-003A & OC04-003B

Complaint filed against Create-A-Scape Landscaping by Montana-Dakota Utilities Company

This complaint involves two alleged violations:

- A. SDCL 49-7A-5 Failure to provide proper notification of proposed excavation
- B. SDCL 49-7A-8 Location of underground facilities

COMPLAINT OC04-003A

Legal Reference: Specific language related to this complaint noted in bold

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§ 49-7A-5. Notification of proposed excavation.

No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. **The excavator shall give notice by telephone, facsimile, in person, or by other methods approved by the board pursuant to rules promulgated pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state,** but not more than ten business days prior to any excavation. The board may promulgate rules to reduce the forty-eight-hour interval for emergency or subsequent inquiries to the original locate request and may lengthen the forty-eight-hour interval for nonexcavation requests. Legal statute for committee review process.

§ 49-7A-1. Definition of terms. (3) "Excavation," any operation in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives, and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving...

Probable Cause Determination

§ 49-7A-25. Complaint, answer to be sole basis for probable cause determination. A determination of probable cause shall be made by the panel solely on these submissions and no other evidence shall be considered

Note: Only comments related to these issues should be taken into consideration, other unsubstantiated comments should not be considered

1. To determine probable cause, after reviewing relevant material, the following questions need to be answered.
 - a. Did excavation activity commence without notification being made to the South Dakota One Call Center?
 - i. If after reviewing the material, you answer in the affirmative, you would then need to answer question 3.
 - ii. If you answer in the negative, you should go to item 2 below.
2. If no probable cause is determined, this complaint will be sent to the involved parties with the determination and reason for the determination. **Formal motion to dismiss is required for dismissal of alleged violations**
3. If probable cause is determined, the committee must determine if the penalty should be assessed under SDCL 49-7A-18 or SDCL 49-7A-19. **Formal motion is required to establish that there is probable cause that the alleged violations occurred.**

Penalty Determination – applicable if probable cause is determined

§ 49-7A-18. Penalties. Except as provided in §49-7A-19 and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of §49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to §49-7A-2, 49-7A-5, or 49-7A-8 may be assessed a penalty of up to one thousand dollars for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.

§ 49-7A-26. Factors considered in determining amount of penalty. The amount of recommended penalty shall be determined by a majority vote of the panel. Factors to be considered in determining the amount of the penalty shall be:

1. The amount of damage, degree of threat to the public safety, and inconvenience caused;
2. The respondent's plans and procedures to insure future compliance with statute and rules;
3. Any history of previous violations;
4. Other matters as justice requires.

You may also reference the attached spreadsheet for a precedent of similar violations.

Formal Motion is required to establish penalty:

COMPLAINT GC04-003B

Legal Reference: Specific language related to this complaint noted in bold

§ 49-7A-8 Location of underground facilities -- Marking.

An operator shall, upon receipt of the notice, advise the excavator of the location of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities. The board shall promulgate rules, pursuant to chapter 1-26, to establish the response time for operators to mark the underground facilities. The response time shall be no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and legal holidays of the state or the excavation start time provided by the excavator, whichever is later. The response time may be less than forty-eight hours for emergency or subsequent inquiries to the original locate request and may be longer than forty-eight hours for nonexcavation requests. **Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall expose the facility with hand tools or noninvasive methods approved pursuant to rule and shall protect and support the facility prior to further excavation with mechanical equipment.**

§ 49-7A-25. Complaint, answer to be sole basis for probable cause determination. A determination of probable cause shall be made by the panel solely on these submissions and no other evidence shall be considered.

Question One: Can an excavator be assessed a penalty for failing to hand dig when the underground facility has been accurately marked relative to another excavators locate request?

1. If Yes, proceed with process
2. If No, complaint may be dismissed for legal reasons

Note: Only comments related to these issues should be taken into consideration, other unsubstantiated comments should not be considered

1. To determine probable cause, after reviewing relevant material, the following questions need to be answered.
 - a. Did excavation activity damage the underground facility of GoldenWest Telecommunications?
 - i. If after reviewing the material, you answer in the affirmative, you would then need to answer question b.
 - ii. If you answer in the negative, you should go to item 2 below.
 - b. Did the excavator know that the damage had occurred and fail to report the damage to GoldenWest Telecommunications and/or the South Dakota One Call Center?
 - i. If after reviewing the material, you answer in the affirmative, you would then need to answer question b.
 - ii. If you answer in the negative, you should go to item 2 below

2. If no probable cause is determined, this complaint will be sent to the involved parties with the determination and reason for the determination. **Formal motion to dismiss is required for dismissal of alleged violations**
3. If probable cause is determined, the committee must determine if the penalty should be assessed under SDCL 49-7A-18 or SDCL 49-7A-19. **Formal motion is required to establish that there is probable cause that the alleged violations occurred.**

If probable cause is found, follow the same guidelines a previously noted in OC04-003A

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-003 (A)

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(A).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(A), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-003(A).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(A). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(A). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JUNE 18, 2004.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC04-003 (A)

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Signature

Wesley Johnson, dba Create-A-Scape Landscaping

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-003(A).


Signature

Wesley Johnson, dba Create-A-Scape Landscaping

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-003 (B)

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-003(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

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SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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OC04-003 (B)

VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION.

Signature

Wesley Johnson, dba Create-A-Scape Landscaping

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-003(B).

Signature

Wesley Johnson, dba Create-A-Scape Landscaping

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-003 (A)

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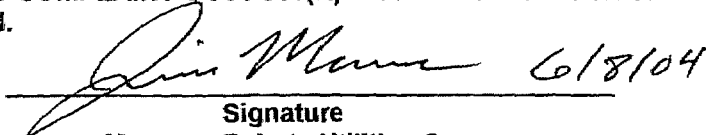
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OC04-003 (A)

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

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Signature
Montana-Dakota Utilities Company

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-003(A).

Signature
Montana-Dakota Utilities Company

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-003 (B)

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-003(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

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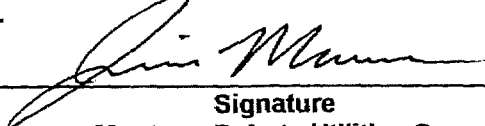
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OC04-003 (B)

VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION.

 6/18/04

Signature
Montana-Dakota Utilities Company

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-003(B).

Signature
Montana-Dakota Utilities Company

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X JUN 04 2004 <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Jim Mann Montana-Dakota Utilities Co. P. O. Box 1060 Rapid City, SD 57701		B. Received by (Printed Name) <i>C. Evans</i>	C. Date of Delivery
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
		7003 1010 0000 7864 7886	
PS Form 3811, August 2001		Domestic Return Receipt 102595-02-M-1540	